

### REMARKS

Please enter the supplemental amendment acting on the response to office action filed on March 3, 2011. Claims 15, 16, 18, 27, 31-32, 35, 38-40, 45-46 are amended, and claims 28, 49-56 are canceled. Claims 1-14, 17, 19-25, 33-34, and 41-44 were previously canceled. Therefore claims 15-16, 18, 26-27, 29-32, 35-40, 45-48 are currently pending.

### **Telephone Interview Summary**

Several telephone interviews were conducted with the Examiner, Dov Popovici, on April 24, 2011 and on April 25, 2011. The claims were discussed.

Examiner Popovici sought clarification on several issues. He indicated that support was needed for the language "recording other files as defined by DICOM..." which was found in each of claims 15 and 35. Support can be found at paragraph [0010] of the specification of Application Publication No. 2002/0085476 as published. No amendments were made to the specification between submission of the patent and the publication of the patent. Therefore, the published patent reflects the application as originally filed. The published application includes numbered paragraphs which make it more convenient to point out parts of the specification. It should be noted that support can be found in the application as filed as well. Accordingly, support can be found in the Application Publication No. 2002/00845476 where it states:

"[0010] The computer server communicates with other medical devices on the network using the DICOM protocol. It receives medical images (patient studies) from other devices, processes the images and burns each patient's images on one or more CDRs along with medical image viewing software and other files as defined by the DICOM protocol..." (Application Publication No. 2002/00845476)

The Examiner also noted that a new abstract would be needed. A new abstract was submitted herewith. The new abstract reflects the method as claimed in context of the disclosure as submitted in the application.

The Examiner also questioned the need for a terminal disclaimer. Applicant acknowledged that there were two other applications filed that are related to this application. Each of the other two applications contains a double patenting rejection. Applicant pointed out

that this application would be the first of the three to issue. Arguably, a provisional double patenting rejection could be made, however, since this is the first of these three cases to issue, the examiner would be required to remove the double patenting rejection and allow the case to pass to issue if this was the only remaining issue. This is set forth in the MPEP which is repeated below:

### **1. Nonstatutory Double Patenting Rejections**

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

If "provisional" ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue. If both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer.

Where there are three applications containing claims that conflict such that an ODP rejection is made in each application based upon the other two, it is not sufficient to file a terminal disclaimer in only one of the applications addressing the other two applications. Rather, an appropriate terminal disclaimer must be filed in at least two of the applications to link all three together. This is because a terminal disclaimer filed to obviate a double patenting rejection is effective only with respect to the application in which the terminal disclaimer is filed; it is not effective to link the other two applications to each other. See MPEP 804.

A link to this material is provided below:

**[http://www.uspto.gov/web/offices/pac/mpep/documents/0800\\_804.htm](http://www.uspto.gov/web/offices/pac/mpep/documents/0800_804.htm)**

The remaining discussions were directed toward fixing various problems regarding lack of antecedent basis and making sure there would be no 35 USC 112, first paragraph problems.

The arguments made in the previous responses provide both the arguments and the reasoning under which the claims are now in allowable form.

It should be noted that claims 49-56 have been canceled without prejudice. These claims have not been examined. Applicant reserves the right to reintroduce these claims at a later time in a continuing application.

**CONCLUSION**

In view of these remarks, Applicants' claim is believed to be in condition for allowance. Upon entry of the above-response, Applicants respectfully requests reconsideration of the case and an early issuance of a Notice of Allowance. Applicant thanks the Examiner for the telephone interviews. If any additional fees are due in connection with the filing of this paper, please also charge these fees to Deposit Account No. 50-3141.

Respectfully submitted,

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